



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,224	11/25/2003	David B. Kochan	93179-4	4957
22463	7590	07/28/2005	EXAMINER	
SMART AND BIGGAR 438 UNIVERSITY AVENUE SUITE 1500 BOX 111 TORONTO, ON M5G2K8 CANADA			HUYNH, LOUIS K	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/720,224

Applicant(s)

KOCHAN, DAVID B.

Examiner

Louis K. Huynh

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 18-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/25/03 & 6/27/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3721

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, claims 1-6, in the reply filed on 05/26/2005 is acknowledged.
2. Claims 7-17 have been cancelled. Claims 1-6 and new claims 18-21 are now pending.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-6 and 18-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 3: "as said jaws deform said tube" lacks proper antecedent basis.

Claim 6, line 1: "said control" lacks proper antecedent basis; perhaps, the phrase should be changed to: --said controlling--.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 5, 6, 18, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Mosher (US 4,768,327).

With respect to Claim 1, Mosher discloses a method of sealing a flexible tube including the steps of: using a motor (66) for driving opposed jaws (42 & 44) disposed about the flexible tube toward each other, using a controller (72) for controlling speed and rate of speed of the jaws as the jaws move toward the flexible tube, using the motor (66) for driving the jaws (42 & 44) into abutment and applying a pressure for a predetermined sealing time, and retracting the jaws. Regarding the recitation of "flexible tube containing a fluid" in the preamble, the method of Mosher is fully capable of sealing flexible tube containing fluid since it does not require any special technique beyond the knowledge of an ordinary skilled person in the art.

With respect to Claim 2, the step of controlling includes decelerating the jaws (42 & 44) prior to the step of driving the jaws into abutment (see col. 6, lines 40-47).

With respect to Claim 3, the step of controlling includes decelerating the jaws (42 & 44) to a stop position whereat the jaws are spaced about 1/8" to 1/4" apart from a fully closed position and maintaining the stopped position for a predetermined time prior to the step of driving the jaws into abutment (see col. 4, lines 13-19).

With respect to Claim 5, one of the jaws (42) includes heating element (55) and the other jaw (44) acts as an anvil.

With respect to Claim 6, the step of controlling includes decelerating the jaws (42 & 44) over a time window to engage the flexible tube (see col. 6, lines 40-47).

With respect to Claims 18 and 19, the jaws (42 & 44) are driven along a linear path via linkage system (56, 58, 60) connected to the motor (66).

With respect to Claim 21, the jaws (42 & 44) are driven in opposite directions via linkage system (56, 58, 60) with an identical motion profile for each cycle.

Art Unit: 3721

7. Claims 1, 4, 5 and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Fukuda (US 5,347,795).

With respect to Claim 1, Fukuda discloses a method for sealing a flexible tube including the steps of: using a motor (40A) for driving opposed jaws (20) disposed about the flexible tube (S) toward each other, using a controller (53) for controlling speed and rate of speed of the jaws as the jaws move toward the flexible tube, using the motor (40A) for driving the jaws (20) into abutment and applying a pressure for a predetermined sealing time, and retracting the jaws (col. 14, line 35 – col. 15, line 15). Regarding the recitation of “flexible tube containing a fluid” in the preamble, the method of Fukuda is fully capable of sealing flexible tube containing fluid since it does not require any special technique beyond the knowledge of an ordinary skilled person in the art.

With respect to Claim 4, the jaws (20) are driven by the motor (40A) and the motor applies a sealing pressure by torquing to produce a specified torque during the sealing process (col. 14, line 53 – col. 15, line 6).

With respect to Claim 5, although Fukuda does not expressly disclose that one of the jaws (20) includes heating element and the other jaw acts as an anvil, it is understood by the skilled person in the art that one of the jaws (20) includes heating element and the other jaw acts as an anvil since Fukuda utilizes thermal sealing process.

With respect to Claims 18-20, the jaws (20) are driven along a linear path via linear bearings (32 & 36) which are threaded for drivingly connected to a threaded turnbuckle (38), and the turnbuckle (38) is connected to an output of the motor (40A) via a belt (39).

With respect to Claim 21, the jaws (20) are driven in opposite directions via linkage system (56, 58, 60) with an identical motion profile for each cycle.

***Conclusion***

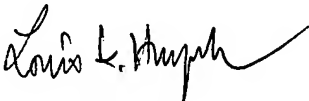
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure has been cited on form PTO-892 along with the applied references.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (571) 272-4462.

The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Louis K. Huynh  
PRIMARY EXAMINER  
Art Unit 3721

July 15, 2005